

Message Text

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ORIGIN NEA-11

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TO AMEMBASSY TEHRAN PRIORITY
INFO AMEMBASSY ABU DHABI PRIORITY

C O N F I D E N T I A L STATE 154087

E.O. 11652: GDS

TAGS: ENRG, EINV, IR, TC

SUBJECT: CRESCENT PETROLEUM PROBLEM

REFERENCES: (A) ABU DHABI 1667, (B) TEHRAN 5639, (C) ABU
DHABI 1701

1. SHOULD SHEIKH SULTAN FOLLOW THROUGH WITH PLAN TO
ARRANGE MEETING BETWEEN CRESCENT, NIOC AND SHARJAH, THIS
WOULD PROVIDE USEFUL OPPORTUNITY FOR PARTIES TO DISCUSS
ECONOMIC ASPECTS OF DISPUTE. SUCH DISCUSSIONS, HOWEVER,
WOULD NOT DIMINISH BINDING NATURE OF ARBITRATION CLAUSE
IN 1968 CONCESSION AGREEMENT. THUS, WHILE EMBASSY TEHRAN
CANNOT ARGUE CRESCENT'S BRIEF WITH NIOC ON ECONOMIC ISSUES,
EMBASSY SHOULD APPROACH NIOC AND GOI TO MAKE IT CLEAR THAT
USG DOES NOT ACCEPT MEHRAN'S CONTENTION THAT, QUOTE, TAX
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AND ROYALTY MATTERS ARE ENTIRELY AN INTERNAL MATTER FALLING
WITHIN SHARJAH'S SOVEREIGNTY AND CANNOT BE REFERRED TO ANY
ARBITRATION BODY, END QUOTE (PARA 1, REF B).

2. IN SUPPORT OF POINT REGARDING SUBMISSION OF TAX
DISPUTES TO ARBITRATION, EMBASSY SHOULD BE AWARE OF
FOLLOWING PROVISIONS OF CONCESSION AGREEMENT:

-- ARTICLE 1 DEFINES "SHARJAH INCOME TAX DECREE" TO MEAN

THE SHARJAH INCOME TAX DECREE ISSUED ON 14 JAMADI, 1338
(SEPTEMBER 7, 1968);

-- ARTICLE 16 STATES THAT THE COMPANY SHALL BE SUBJECT
TO INCOME TAX IN ACCORDANCE WITH THE SHARJAH INCOME TAX
DECREE;

-- ARTICLE 17 STATES THAT "EXCEPT AS SPECIFICALLY PROVIDED
IN THIS AGREEMENT AND IN ANY AGREEMENT SUPPLEMENTAL
HERETO, THE COMPANY SHALL, IN RESPECT OF ALL INCOME
DERIVED FROM THE OPERATIONS OF THE COMPANY UNDER THIS
AGREEMENT...BE FREE AND EXEMPT DURING THE PERIOD OF
THIS AGREEMENT FROM ALL PRESENT AND FUTURE TAXATION,
IMPOSTS AND CHARGES WHATSOEVER (OTHER THAN TAX PAYABLE
UNDER THE SHARJAH INCOME TAX DECREE)...";

-- ARTICLE 33 PROVIDES THAT "THE MUTUAL CONSENT OF THE
RULER AND THE COMPANY SHALL BE REQUIRED TO ANNUL, AMEND
OR MODIFY THE PROVISIONS OF THIS AGREEMENT";

-- ARTICLE 34 PROVIDES THAT, "IF ANY DOUBT, DIFFERENCE
OR DISPUTE SHALL ARISE AT ANY TIME (A) BETWEEN THE
PARTIES HERETO CONCERNING THE INTERPRETATION HEREOF OR
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ANYTHING HEREIN CONTAINED OR IN CONNECTION HEREWITH, OR
CONCERNING THE RIGHTS AND LIABILITIES OF ANY OF THE
PARTIES HEREUNDER OR (B) BETWEEN THE DIRECTOR OF INCOME
TAX AND THE COMPANY IF SUCH DISPUTE IS NOT SETTLED IN
ANY OTHER WAY THE SAME SHALL BE REFERRED TO TWO ARBITRATORS,
ONE OF WHOM SHALL BE CHOSEN BY EACH PARTY AND TO A REFEREE
WHO SHALL BE CHOSEN BY THE TWO ARBITRATORS..." ETC.;

-- ARTICLE 37 STATES THAT "IF, IN THE FUTURE, ARRANGEMENTS
ARE MADE BETWEEN THE GOVERNMENT OF SHARJAH OR OF ANY
OTHER STATE IN THE MIDDLE EAST OR THE AGENT OF ANY SUCH
GOVERNMENT AND THE COMPANY OR ANY OTHER COMPANY OR
COMPANIES OPERATING IN THE PETROLEUM INDUSTRY AS A RESULT
OF WHICH AN INCREASE IN BENEFITS SHOULD ACCRUE GENERALLY
TO ALL SUCH GOVERNMENTS AS AFORESAID THEN THE RULER AND
THE COMPANY SHALL REVIEW AND DISCUSS THE CHANGED CIRCUM-
STANCES WITHIN THE PETROLEUM INDUSTRY TAKING INTO CONSID-
ERATION OPERATING CONDITIONS WITHIN SHARJAH IN ORDER TO
DECIDE WHETHER ANY ALTERATION TO THE TERMS OF THIS
AGREEMENT WOULD BE EQUITABLE TO BOTH PARTIES."
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